

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST
FOR REVIEW BY:

JUSTINA COLEMAN

Petitioner.

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CHARGE NO.: 2009CA1894
EEOC NO.: 21BA90715
ALS NO.: 10-0189

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon Justina Coleman's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")^[1] of Charge No. 2009CA1894; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, **THEREFORE**, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following:

1. On August 7, 2008, the Petitioner filed an unperfected charge of discrimination with the Respondent. The Petitioner perfected the charge on November 11, 2008. The Petitioner alleged in her charge that MiraMed Revenue Group, LLC ("Employer") discharged her from her Data Entry Clerk position on June 6, 2008, because of her age, 54, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). The Respondent initially dismissed the Petitioner's charge for lack of substantial evidence on July 9, 2009. The Petitioner filed her first Request for Review of that dismissal with the Commission on August 12, 2009. On September 10, 2009, the Commission issued an order which remanded the case to the Respondent for further investigation. On February 16, 2010, the Respondent again dismissed the Petitioner's charge for lack of substantial evidence. On March 17, 2010, the Petitioner timely filed this second Request.

^[1] In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

2. At the time the Petitioner was employed, the Employer had in place an Employee Code of Conduct (“the Code”) which was contained in its Employee Handbook (“Handbook”). Detailed in the Handbook were the Employer’s standards of good behavior. The Handbook also set forth the Employer’s disciplinary policy for employees who violated the Code. Employees in violation of the Code would be subjected to progressive discipline.
3. Between April 24, 2008 and June 3, 2008, the Employer received multiple complaints from the Petitioner’s co-workers about the Petitioner’s alleged behavior. After receiving five complaints against the Petitioner—three of which were made on May 21, 2008—the Employer issued the Petitioner a written warning, informed the Petitioner that her conduct would not be tolerated, and warned that such further conduct might result in the Petitioner’s suspension and/or termination.
4. On June 3, 2008, the Employer received another complaint from an employee about the Petitioner’s alleged conduct.
5. On June 6, 2008, the Employer discharged the Petitioner. The Employer stated it discharged the Petitioner because she violated the Code by engaging in unacceptable and unprofessional behavior from April 24, 2008 to June 3, 2008.
6. The Respondent discovered as a result of its investigation that from February 6, 2009 through March 9, 2009, the Employer had also discharged similarly situated younger employees for violating the Code.
7. In her charge, the Petitioner alleged she was discharged because of her age, 54, and contends younger employees who were accused of harassing co-workers were treated more favorably by the Employer.
8. In her Request, the Petitioner argues that she did not know the proper channels or procedures for reporting age discrimination because she did not receive a Handbook. The Petitioner also

denies having engaged in any misconduct. Finally, the Petitioner contends the Respondent did not interview several of her witnesses.

9. In its Response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for lack of substantial evidence.

Conclusion

The Commission concludes the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS § 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

There is no substantial evidence that the Employer's employment decision was motivated by the Petitioner's age. The Petitioner's *prima facie* case fails because there is no evidence the Employer treated a similarly situated younger employee more favorably under similar circumstances. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994). Rather, the Respondent determined the Employer had also discharged younger employees for violating the Code.

Assuming *arguendo* the evidence was sufficient to support a *prima facie* case, the Employer articulated a legitimate, non-discriminatory reason for its actions. The Employer had documented various complaints against the Petitioner by her co-workers over a two-month period of time. Prior to the Petitioner's discharge on June 6, 2008, the Petitioner had been issued a written warning on May 21, 2008. Following the issuance of the written warning, the Employer received yet another complaint about the Petitioner's conduct. Three days thereafter, the Employer discharged the Petitioner. There has been no evidence of pretext either discovered by the Respondent or presented by the Petitioner. The Employer is entitled to make employment decisions based on its reasonable belief of the facts surrounding the situation. See Carlin v. Edsal Manufacturing Company, Charge No. 1992CN3428,

ALS No. 7321 (May 6 1996), citing Homes and Board of County Commissioner, Morgan County, 26 Ill HRC Rep. 63 (1986). Absent any evidence of the pretext, the Commission will not substitute its judgment for that of the Employer.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

WHEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and the MiraMed Revenue Group, LLC, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 18th day of November 2010.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini